



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 10, 2023

Initial conference is adjourned from February 21, 2023 to March 28, 2023 at 11:00 a.m. The conference will proceed telephonically. Call-in information is:
Dial-In No.: 1-888-363-4749, Access Code: 3667981.
SO ORDERED.
Dated: 2/15/2023

P. Kevin Castel

United States District Judge

By ECF

Honorable P. Keven Castel
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *2741 Brothers Deli Grocery Inc. and Abdulkafi M. Al Muntaser v. U.S. Dep't of Agriculture, Food and Nutrition Service*, No. 22-9317-PKC

Dear Judge Castel:

The parties jointly submit this letter in accordance with the Court's order dated November 20, 2022. ECF No. 5. The initial conference in this matter is currently scheduled for February 21, 2023 at 2:30 p.m.

The parties have conferred and jointly request an adjournment for the initial conference pending preparation of the Administrative Record ("AR"). The reason for this request is that parties could not reach an agreement regarding discovery. Whereas Plaintiff intends to seek discovery, it is the government's intent to seek leave of the Court to move for summary judgment based upon the AR, and thus contends that discovery is not necessary at this juncture in the case. However, the parties agree it would be appropriate to further discuss the issue of discovery once the AR has been produced.

The government expects to complete preparation of the AR by February 24, 2023. Accordingly, the parties respectfully request that the initial conference be adjourned 30 days after the AR has been prepared, March 27, 2023, or to a subsequent date more convenient to the Court.

The parties have conferred regarding the joint letter and jointly submit the following information.

1. Brief Description of the Case, including the factual and legal bases for the claims(s) and defense(s)

This is a civil action brought against Defendant U.S. Dep't of Agriculture, Food and Nutrition Service ("FNS"), in which Plaintiffs—a convenience store in White Plains, New York and its sole shareholder and officer—seek review of a Final Agency decision by the FNS permanently disqualifying Plaintiffs from participating in the Supplemental Nutrition Assistance Program ("SNAP"). *See* ECF 1. Plaintiffs bring this action pursuant to 7 U.S.C. § 2023, seeking to set aside that determination.

Brief History of the Case

Following an investigation by FNS, Defendant advised Plaintiffs on June 23, 2022, that Plaintiffs were being charged with trafficking, as defined in Section 271.20 of SNAP regulations and corresponding Pandemic Electronic Benefit Transfer (“P-EBT”) regulations at 7 C.F.R. Part 284. On June 30, 2022, Plaintiff 2741 Brothers Deli Grocery responded by denying the charges, submitting photographs of the retail establishment, and making a request for information under the Freedom of Information Act, 5 U.S.C. § 552. On August 16, 2022, Defendant issued a determination letter permanently disqualifying Plaintiffs from SNAP based on the finding that the violations cited in the charge letter had occurred at Plaintiff 2741 Brothers Deli Grocery. On August 26, 2022, Plaintiff 2741 Bothers Deli asked for an extension of time to submit evidence and brief in support of its administrative appeal. On September 12, 2022, FNS granted Plaintiffs an extension to October 3, 2022. FNS nonetheless did not receive any information supporting the request for review by the extended deadline, and on October 26, 2022, Defendant issued a final agency decision, advising that the determination made by FNS to permanently disqualify 2741 Brothers Deli Grocery from participating as a retailer in the SNAP is the final agency decision pursuant to 7 S.S.C. § 2023, which states that “if such store . . . fails to submit information in support of its position after filing a request, the administrative determination shall be final.” Therefore, in the absence of any information supporting the request for review, the administrative review was closed as “moot.” Plaintiffs then filed the instant action to challenge their disqualification from SNAP.

Plaintiffs’ Contentions

Defendant did not conduct any review of the evidence submitted in response to the agency’s charges, and to date the agency has failed to provide any of the documents or information identified in plaintiffs’ Jun. 30, 2022 FOIA request.

Plaintiffs categorically deny all allegations in the agency’s charge letter, to which all the government’s evidence is 100% circumstantial. The agency has yet to provide or identify a single witness who has personal knowledge of any allegations or instances where plaintiff(s) participated in any exchanges of money for SNAP benefits.

After receiving unredacted disclosures that reveal the real identities of all parties to the alleged unusual transactions, plaintiffs will produce as many of those parties as are then available to give sworn testimony that there were no monetary exchanges for SNAP benefits.

Defendant’s Contentions

Defendant contends that the challenged administrative action was valid, reasonable, based upon probative evidence, and not arbitrary, capricious, or contrary to law.

2. Any contemplated motions

Defendant intends to move for summary judgment based upon the certified administrative record, which is in the process of being prepared. Defendant’s estimated date for completion of the administrative record is February 24, 2023.

3. The prospect for settlement

At this time, Defendant intends to proceed with further litigation, but remains open to settlement discussions.

The parties thank the Court for consideration of this submission

Respectfully,

DAMIAN WILLIAMS
United States Attorney

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cc: Joseph A. Bahgat, Counsel for Plaintiffs (by ECF)